

PT 95-57
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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BETH-ANNE FOUNDATION      )   Docket No.(s)  92-16-1603  
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                           )   Applicant  
                           )   PI No.   16-04-404-003-0000  
                           )   (Cook County)  
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v.                           )  
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THE DEPARTMENT OF REVENUE  )   George H. Nafziger  
OF THE STATE OF ILLINOIS  )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney David S. Martin appeared on behalf of the Beth-Anne Foundation (hereinafter referred to as the "Applicant").

SYNOPSIS: The hearing in this matter was held at 100 West Randolph Street Chicago, Illinois, on December 12, 1994, to determine whether or not Cook County parcel No. 16-04-404-003-0000 and the buildings thereon, should be exempt from real estate tax for the 1992 assessment year.

Is the Applicant a charitable organization? Did the Applicant own the parcel here in issue and the buildings thereon, during the 1992 assessment year? Did the Applicant use the parcel here in issue and all of the buildings thereon, for charitable purposes during the 1992 assessment year? Following the submission of all of the evidence and a review of the record, it is determined that the Applicant is a charitable organization. It is also determined that the Applicant owned the parcel here in issue and the buildings thereon, during the 1992 assessment year. It is further determined that during the period January 1, 1992, through May 18, 1992, the Applicant was in the process of adapting the former nursing school for exempt use, as the site for the day care center building. It is also

determined that the first floor of the three-story portion of Amberg Hall was used for primarily charitable purposes during the 1992 assessment year, while the second and third floors of Amberg Hall were not primarily used for charitable purposes during 1992. Finally, it is determined that the former convent, also known as the chapel, was in the process of adaptation for exempt use during the 1992 assessment year.

FINDINGS OF FACT: The position of the Illinois Department of Revenue (hereinafter referred to as the "Department"), in this matter, namely that 78% of the parcel here in issue and 78% of the buildings thereon, should be exempt from real estate tax for the period January 1, 1992, through May 18, 1992, and that 93% of this parcel and 93% of the buildings thereon, should be exempt from real estate tax for the period May 19, 1992, through December 31, 1992, was established by the admission in evidence of Department's Exhibits 1 through 6C.

Ms. Mary Nelson, president of Bethel New Life, Inc., and also president of the Applicant, was present at the hearing, and testified on behalf of the Applicant.

The Applicant was organized by Bethel New Life, Inc. (hereinafter referred to as "Bethel"). Bethel is a community development corporation, which was started by Bethel Lutheran Church, to help revitalize and rebuild the West Garfield Austin Community on the west side of Chicago. Near the end of 1989, it became apparent that St. Anne's Hospital of Chicago, Inc. a 437-bed acute care hospital, was going to close. On December 21, 1989, Bethel incorporated the Applicant pursuant to the General Not For Profit Corporation Act of Illinois, for the following purposes:

"To operate exclusively for charitable, religious, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any subsequent federal tax law ('Code'), by operating exclusively for the benefit of, carrying out the purposes of, and being supervised or controlled by or in connection with, Bethel New Life, Incorporated, an organization described in and qualified under both Sections 501(c)(3) and

590(a)(1) of the Code and currently located in Chicago, Illinois (hereinafter referred to as the 'Supported Organization'), to provide support exclusively to the Supported Organization in its programs and activities for the promotion of the welfare and relief of the poor and the elderly and to combat community deterioration, and in connection therewith, and not in limitation thereof, to accept, encourage, manage, invest and/or maintain funds or assets received by gift, devise, bequest, grant or otherwise for and on behalf of the Supported Organization. The corporation shall not operate to support or benefit any organization other than the Supported Organization."

On December 29, 1989, the Applicant acquired the property of St. Anne's Hospital of Chicago, Inc., including this parcel and the eight buildings then located thereon. On January 1, 1992, said eight buildings were still located on this parcel. On May 19, 1992, the five-story, 53,943 square foot former school of nursing building was demolished.

The Department's Real Estate Exemption Certificate issued April 14, 1994, determined that the buildings located on this parcel, qualified for exemption during the period January 1, 1992, through May 18, 1992, except for the five-story former school of nursing building containing 53,943 square feet, the three-story portion of Amberg Hall, containing 16,288 square feet and the one-story former convent, containing 5,620 square feet. For the period May 18, 1992, through December 31, 1992, the Department's Exemption Certificate determined that the new one-story, 9,150 square foot day care building, which was under construction in the area where the former school of nursing building had been located, qualified for exemption so that only the three-story portion of Amberg Hall, containing 16,288 square feet and the one-story former convent containing 5,620 square feet, did not qualify for exemption during that period.

On January 1, 1991, the Applicant received a grant from the United States Department of Health and Human Services to pay for the preparation for the demolition of the former school of nursing building and the design for the day care center. Before March 1, 1991, the Applicant had received bids for the demolition of the school of nursing building. However,

environmental testing revealed that this building contained some asbestos, which required that Applicant rebid the demolition work to include asbestos removal. During 1990, the Applicant hired the architectural firm of Shayman & Salk to do design work for the property. Since the school of nursing building was connected to other buildings at three locations, the architects prepared demolition specifications to help protect the other buildings. The architects also did some design work on the day care center before January 1, 1992. In early 1992, it was necessary to stop and determine if the former school of nursing building qualified as a historic building. It was determined that it did not so qualify. Demolition of the former school of nursing began on May 19, 1992. The day care center building was completed on that site during 1994, and received its day care license in September 1994.

I therefore find that on January 1, 1992, the Applicant was in the process of adapting the former nursing school building for exempt use as the site for the day care center building, and the Applicant was in the process of preparing for the demolition of said school of nursing building on that date.

During 1992, Amberg Hall consisted of a one-story 5,000 square foot area which was used as a conference or meeting area, which the Department had determined qualified for exemption in the Exemption Certificate issued April 14, 1994, and also a three-story 16,288 square foot area which the Department had determined did not qualify for exemption in that certificate. Concerning the three-story portion of Amberg Hall, during 1992, the Applicant had cleaned up the first floor, and used some of the rooms for children's activities when there were conferences in the adjoining conference area. This floor was also used for offices for the persons working on the development of the new uses of the former hospital facilities. During 1992, the second and third floors were not used except

for storage of equipment owned by the former owner of this parcel. The Applicant eventually utilized some of this equipment, and the rest was disposed of. On the date of the hearing, the first floor was used as the office of the building, a small conference room, an office equipment room, and an office for the building receptionist. At the time of the hearing, the second floor was being used for various types of training, to help the area residents become employable. The third floor, on the date of the hearing, had been remodeled to be used as a business incubator. The business incubator would provide office space and support services for local area residents starting new businesses. These businesses would pay rent to the Applicant for their office space. While certain planning had been done before 1992, the Applicant had found that to utilize the three-story portion of Amberg Hall, an elevator would have to be installed to make it handicapped accessible. The Applicant was unable to proceed with renovation of this building and the installation of the elevator, until funding was obtained. The Applicant did not obtain funding for this project until mid-1993. After obtaining the funding, the Applicant proceeded with the renovation of the three-story portion of Amberg Hall, which was completed during 1994.

Based on the foregoing, I find that during 1992, the first floor of the three-story portion of Amberg Hall was used for charitable purposes, as an adjunct to the one-story conference room portion of Amberg Hall, or as offices for the persons adapting the buildings on this parcel for use by the Applicant. Concerning the second and third floors of Amberg Hall, the Applicant, I find, did not identify which areas were utilized for storage of items which were utilized by the Applicant, and which areas were utilized for storage of items which were disposed of by the Applicant.

While certain preliminary planning for the use of the second and third floors of the three-story portion of Amberg Hall was done during 1991 and

1992, the Applicant was not in a position to proceed with the adaptation of these areas until financing was received in mid-1993. Also, the second and third floors of Amberg Hall, after being remodeled by the Applicant, were used for both exempt and nonexempt purposes.

With regard to the former convent, also known as the chapel, during December 1991 the Applicant was holding meetings concerning planning for the development of a performing arts center in that building, and had applied for a planning grant for that purpose from the MacArthur Foundation. During 1992, the MacArthur Foundation provided a grant to the Applicant for a feasibility study for the performing arts center. This study was completed during September 1992. By July of 1992, the former chapel had been cleaned up, and was available for use. By the date of the hearing, the former chapel was, in fact, being used as a performing arts center. At the time of the hearing, Applicant was not charging for the use of this performing arts center. Applicant hopes to be able to obtain additional equipment to upgrade this facility in the future.

Based on the foregoing, I find that the Applicant was in the process of adapting the former chapel for exempt use as a performing arts center, during the entire 1992 assessment year.

1. Since the Department exempted 78% of this parcel and the buildings thereon, for the period January 1, 1992, through May 18, 1992, and 93% of said parcel and buildings thereon, for the period May 19, 1992, through December 31, 1992, I find that the Department has determined that the Applicant owned this parcel and the buildings thereon, during 1992, and is a charitable organization.

2. The Applicant, I find, was engaged in the process of adapting the former school of nursing building for exempt use as the site for the one-story day care center building, during the period January 1, 1992, through May 18, 1992.

3. During the period May 19, 1992, through December 31, 1992, I find that the Department had previously determined that the former site of the school of nursing was in the process of adaptation for exempt use as the new one-story day care center.

4. During 1992, I find that the first floor of the three-story portion of Amberg Hall was used for charitable purposes as the location of children's activities, when the conference area was in use, and also as the offices for the persons working on the development of new uses for the former hospital facility.

5. The second and third floors of Amberg Hall were used during 1992, for storage of equipment used by the former owner of this parcel. Some of this equipment was used by the Applicant, and the rest was eventually disposed of by the Applicant.

6. I find that no evidence was offered concerning which areas of the second and third floors were used for storage of the former hospital property which was eventually used by the Applicant, and which areas were used for the storage of former hospital property which was disposed of by the Applicant.

7. The Applicant, I find, did not begin to adapt the second and third floors of Amberg Hall for its use, until financing was obtained in mid-1993.

8. I also find that the uses of the second and third floors of Amberg Hall, after adaptation, included both exempt and nonexempt uses.

9. Finally, I find that the Applicant was in the process of adapting the former chapel for exempt use as a performing arts center, during the entire 1992 assessment year.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school

districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.7 (1992 State Bar Edition), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

In view of the Department's Real Estate Exemption Certificate issued in this matter on April 14, 1994, I conclude that the Department has determined that the Applicant is a charitable organization, and that it owned the parcel here in issue and the buildings thereon, during the 1992 assessment year. The issues presented in this matter then, are whether or not the former school of nursing building, during the period January 1, 1992, through May 18, 1992, and the three-story portion of Amberg Hall, and the former chapel, during the entire 1992 assessment year, were used for charitable purposes.

Illinois Courts have held property to be exempt from tax where it has been adequately demonstrated that the property is in the actual process of development and adaptation for exempt use. *Illinois Institute of*

Technology v. Skinner, 49 Ill.2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop of Chicago, 311 Ill. 11 (1924); In re Application of County Collector, 48 Ill.App.3d 572; (1st Dist. 1977); and Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987).

In the Weslin Properties, Inc. case, on May 26, 1983, Weslin Properties, Inc. purchased a 24.3-acre tract, a portion of which was to be developed into an Urgent Care Center first, and the remainder to be developed as a hospital and related medical facilities, later on. During May 1983, a master site plan was developed. During October 1983, the plans for the Urgent Care Center was approved. In early 1984, a construction manager was hired. The ground breaking was held in August 1984, with the building to be completed in May of 1985. The master plan included a hospital building, and also a medical office building to be constructed later. The Court concluded that while the Urgent Care Center qualified for exemption during 1983, the remainder of that parcel did not qualify for exemption during 1983. The Court, at page 587, set forth its conclusions as follows:

"We conclude that the land necessary for the Urgent Care Center and necessary roads and parking facilities qualified for exemption in 1983. Plaintiff is not entitled to an exemption for the entire tract, however, because there is insufficient evidence from which we can say that plaintiff is adapting the entire tract for an exempt use. As shown by an affidavit of Mr. Lintjer, except for the Urgent Care Center, 'the specific uses and the timetable for construction of the various structures are of necessity indefinite.' There is evidence that other buildings in the planned complex will be rented office space which would not be entitled to exemption. The plans for the other buildings, at least as of 1983, more closely resemble the intentions of the plaintiff in Illinois Institute of Technology v. Skinner (1971), 49 Ill.2d 59, 273 N.E.2d 371, and thus do not constitute adaptation for an exempting use."

Based on the foregoing, I conclude that the former school of nursing building, during the period January 1, 1992, through May 18, 1992, and the former chapel, during the entire 1992 assessment year, were in the process of being adapted for exempt use, like the Urgent Care Center in the Weslin

case.

In view of the fact that the Applicant did not obtain the financing to begin the adaptation of the three-story portion of Amberg Hall until mid-1993, I conclude, that the situation concerning the three-story portion of Amberg Hall during 1992, resembled the situation concerning the remainder of the Weslin tract other than the Urgent Care Center, during 1983, particularly since the business incubator, like the medical office building, may not qualify for exemption. The primary beneficiaries of the business incubator will be the persons starting the businesses, and leasing the areas of the third floor from the Applicant. The benefits to the community of the creation of a few jobs, will be merely incidental.

The Fourth District Appellate Court in *Mason District Hospital v. Tuttle*, 61 Ill.App.3d 1034 (4th Dist. 1978), held that a medical center built to attract physicians to Havana, Illinois, while incidentally benefiting the community by making medical care available, primarily benefited the for profit medical practices of the physicians, and therefore did not qualify for exemption. In this case, while the community may incidentally benefit from the creation of a few jobs, the primary beneficiaries of the Applicant's business incubator will be the for-profit business tenants. Concerning the leasing of space in the business incubator, it should also be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. *People ex rel. Baldwin v. Jessamine Withers Home*, 312 Ill. 136 (1924). See also *The Salvation Army v. Department of Revenue*, 170 Ill.App.3d 336 (1988), leave to appeal denied.

Since I have concluded that the three-story portion of Amberg Hall was not being adapted for exempt use during 1992, let's see if the actual use of said area qualified for exemption during 1992.

I have previously found that the first floor of the three-story portion of Amberg Hall had been used for the charitable purposes of children's activities when the conference area was in use, and also as the offices of persons working on the new uses of the entire facility during 1992. Consequently, I conclude that the first floor of Amberg Hall was used for charitable purposes during 1992.

Concerning the second and third floors of the three-story portion of Amberg Hall, I have previously found that those floors were used during 1992, for storage of equipment belonging to the former owner of the property, some of which was eventually used by the Applicant, and some of which was disposed of. No evidence was offered concerning which areas of the second and third floors had items stored in them, which were eventually utilized by the Applicant, and which areas contained items of the former owner, which were disposed of. While the areas used for the storage of items which were put in service by the Applicant for its charitable purposes would qualify for exemption, the storage of items belonging to another, which the Applicant was required to dispose of, would not so qualify. In the situation where the property as a whole was used for both exempt and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is only incidental. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59 (1971). See also *MacMurray College v. Wright*, 38 Ill.2d 272 (1967). Since no evidence was offered as to which use was the primary use, I conclude that the second and third floors of the three-story portion of Amberg Hall did not qualify for exemption during the 1992 assessment year.

The total square footage of all of the buildings on Cook County parcel No. 16-04-404-003-0000, on January 1, 1992, excluding the square footage of the former five-story school of nursing building and including the square footage of the one-story day care center, I conclude, was 315,539 square

feet. The square footage of the second and third floors of the three-story portion of Amberg Hall, during 1992, I conclude, was 10,860 square feet. Consequently, I conclude that the square footage of the second and third floors of the three-story portion of Amberg Hall was 3% of the total square footage of all of the buildings on this parcel.

I therefore recommend that 97% of Cook County parcel No. 16-04-404-003-0000 and the buildings located thereon, hereinbefore described, be exempt from real estate tax for the 1992 assessment year.

I further recommend that 3% of Cook County parcel No. 16-04-po404-003-0000 and the building hereinbefore described, remain on the tax rolls for the 1992 assessment year, and be assessed to the Applicant, Beth-Anne Foundation, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

August , 1995